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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUSTINIANO SANTIBANEZ,)	Case No. SACV 11-396 RNB
Plaintiff,)	
vs.)	ORDER GRANTING MOTION TO
)	DISMISS
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
Defendant.)	

Now pending before the Court and ready for decision is the Commissioner's motion to dismiss for lack of subject matter jurisdiction.

The Commissioner contends and plaintiff does not dispute that the Court's subject matter jurisdiction here arises out of 42 U.S.C. § 405(g), which limits the Court's jurisdiction to the review of a final decision of the Commissioner of Social Security after a hearing to which the plaintiff was a party.

The Commissioner contends and plaintiff does not dispute that the final decision subject to review here is the decision rendered by Administrative Law Judge Kays on September 9, 2009, as to which the Appeals Council denied review on January 18, 2011. (A copy of this decision is attached as Exhibit B to the Commissioner's Motion.)

1 The Commissioner contends and plaintiff does not dispute that the ALJ's
2 September 9, 2009 decision was directed to the application for benefits that plaintiff
3 filed on January 5, 2007. (A copy of this application is attached as Exhibit A to the
4 Commissioner's Motion.)

5 The Commissioner contends that the January 5, 2007 application constituted
6 an application solely for Supplemental Security Income (aka Title XVI) benefits, and
7 that the ALJ's September 9, 2009 decision constituted solely an adjudication of
8 plaintiff's eligibility for Title XVI benefits. The Commissioner further contends that,
9 in light of plaintiff's death on January 8, 2011, this action should be dismissed for
10 lack of an actual "case or controversy" because, under 20 C.F.R. § 416.542(b)(4),
11 Title XVI benefits may not be paid to a decedent's estate or to any survivor other than
12 an eligible surviving spouse and plaintiff here has not alleged there is an eligible
13 spouse.

14 In plaintiff's opposition to the Commissioner's motion, plaintiff concedes that
15 a Title XVI claim terminates upon the death of the claimant if no eligible party can
16 be substituted in the claimant's place, and that there is no such eligible party here for
17 purposes of plaintiff's Title XVI benefits claim. Plaintiff contends, however, that the
18 January 5, 2007 application should be deemed a de facto or implied request to reopen
19 plaintiff's prior application for disability insurance (aka Title II) benefits, which
20 originally was filed on October 24, 2003 and denied on January 20, 2004. Based on
21 its own review of the January 5, 2007 application and the ALJ's September 9, 2009
22 decision, and for the reasons stated in the Commissioner's reply to plaintiff's
23 opposition, the Court rejects this first contention by plaintiff.

24 Plaintiff's other contention is that, by failing to (a) provide plaintiff with
25 another hearing, after stating, "You'll probably be hearing from us shortly, probably
26 have another hearing in three months," (b) provide plaintiff or his counsel with the
27 Record prior to making a decision, and (c) provide plaintiff's counsel with an
28 opportunity to present plaintiff's case including a request to reopen, the ALJ violated

1 plaintiff's due process right to a hearing. However, the Court concurs with the
2 Commissioner that, even if there was any substance to this constitutional claim, the
3 due process violation (if any) was in the context of the ALJ's denial of plaintiff's
4 application for Title XVI benefits, which was extinguished upon plaintiff's death
5 without an eligible spouse. See 20 C.F.R. § 416.542(b)(4); see also 42 U.S.C. §
6 1383(b); 20 C.F.R. § 416.542(b)(1); Smith v. Califano, 597 F.2d 152, 155 (9th Cir.),
7 cert. denied, 444 U.S. 980 (1979). Plaintiff has failed to cite any legal authority
8 supportive of a different conclusion.

9 The Commissioner's motion to dismiss is therefore granted.

10 LET JUDGMENT BE ENTERED ACCORDINGLY.

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12 DATED: November 7, 2011

A handwritten signature in dark ink, appearing to read "Robert N. Block", is written over a light-colored rectangular background.

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15 ROBERT N. BLOCK
UNITED STATES MAGISTRATE JUDGE
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